

Educational Technology and the Fair Use Doctrine

by
Michael D. King

Today's technology makes it easy to remix and share on a grand scale. With the availability of open source software like Audacity, MovieMaker, imovie, and photostory3, educators and students can engage in the act of remixing content. These new technology tools allows an individual to remix digital content and share with millions of other educators through Web 2.0 collaboration projects like Teacher Tube, YouTube, edublogs, pbwiki, Facebook and other Web 2.0 social networking platforms . This remixing of media has created a whole new challenge to redefining copyright fair use policies and what is now known as Creative Commons. Currently anything that is published on the web has immediate ownership by the creator.

Since the invention of the printing press, there has been an ongoing debate on how copyright laws should protect individuals who produce, and wish to protect, their original work. Now, with emerging technology and the information highway, educators again are finding necessary to reshape these rules to fit the copyright needs of today and, ideally, the future. In education alone, policy developers are facing challenges regarding copyright that did not exist 20 years ago, such as use of music in videos, podcasting, and software sharing. In these and other areas, policy developers must strike a balance between protecting the creators of original work and allowing students or faculty members to use the works in an appropriate and legal manner, especially when posting works on the world wide web.

The use of technology in the school, especially the social networking applications, has dramatically changed the way educators gather and remix information. This fact makes restructuring copyright regulations a necessary component for school revisions in ethical use of digital media. Until the last two decades, written information mainly was distributed through textbooks and publications under the watchful eye of a publishing company. The people within these textbook companies had great influence on copyright policies; therefore, the publishers made copyright policy arrangements with the district at the time of purchase. However, today, educators and students can often obtain educational materials directly from the creator, especially through use of the Internet. While this increases access to educational resources, it also can make people less likely to abide by copyright laws and regulations. Because of this, schools now are faced with a new problem which can only be remedied by developing and educating related users to copyright policy and the remixing of digital media.

Schools are not exempt from following copyright policies. The laws do, however, allow leniency in certain copyright areas when materials are being used for educational purposes. Schools must educate teachers and staff about copyright laws and other regulations. This has a two-fold benefit. First, knowledge and proper use of copyrighted materials can protect the school from litigation. Second, teachers may find they legally can use more materials than they realized, thereby offering more instructional resources for their classroom.

A component that needs to be addressed in the school's copyright policy understanding is the concept of fair use. Copyright law and related guidelines, do allow leniency for educational and other uses. This exception comes from the Fair Use Doctrine, which allows some copyrighted materials to be used without permission from the creator. Therefore, materials that can be used without the creator's permission are known to meet "fair use" standards. The doctrine basically

states that the work can be used in a not-for-profit fashion that will not cost the ant due creator income. It serves as middle ground between the rights of the creator as defined by copyright law and the rights of the public as defined in the First Amendment of the Constitution.

The Fair Use doctrine addresses four issues the courts use to determine whether or not a copyrighted material has been used legally. First, they will determine whether it has been used for nonprofit and/or educational purposes. Secondly, the nature of the copyrighted work will be explored. Next, the courts will consider how much of the work has been used as compared to how much of it exists. Finally, the courts will determine the effect of the use on the potential market for or the value of the copyrighted work in question.

Professionals in the publishing world, congressmen and educators, are trying now to decide how the fair use doctrine applies to technology resources such as the Worldwide Web. The Digital Millenium Act of 1998 tried to remedy some of these questions, especially in the areas of distance learning and Internet provider liability. Unfortunately, a number of areas addressed in the Digital Millenium Act of continue to be gray and misunderstood. This leaves a continuation for debate that leaves teachers trying stretch the Fair Use Doctrine for needed uses while simultaneously teaching students about respect for copyright laws and regulations.

What is Fair Use

Fair use provides educators with information about fair use and face-to-face exception, as well as helpful guidelines to remember fair use rules and regulations.

The school recognizes that only copyrighted materials that qualify under the Fair Use Doctrine can be used. This rule grants permission to use copyrighted materials for commenting, criticizing, teaching, news reporting or participating in other activities in the area of education/scholarship. Additionally, the Fair Use Doctrine allows teachers to use copyrighted materials in the classroom for “face-to-face” instruction under district or school guidelines. A good policy to develop would state that anytime copyrighted materials are used, staff members will include the copyright notice (copyright, year of first publication, and name of copyright holder) with all of the copyright ownership information (author, title, publisher, and place and date of publication) as given on the original work.

Why We Need Fair Use

Question: Why do I need to know about Fair Use?

Answer: Fair Use is a way to reconcile copyright law and First Amendment rights. It is what allows educators to copy some materials at certain times without seeking the copyright owner's permission. Without it, nothing could ever be copied without the copyright holder's permission.

Mandated Fair Use Guidelines

Question: What are the guidelines for applying Fair Use?

Answer: There are four factors which must all be considered in order to copy material under fair use. The guidelines are:

- the purpose and character of the use: commercial or nonprofit educational use
- the nature of the copyrighted work

- the amount to be copied in relation to the work as a whole
- the effect of the use upon the potential market for or value of
- the copyrighted work

Helpful Guidelines to Remember About Fair Use

When considering Fair Use, it will help you to note these concepts.

- You are usually able to apply Fair Use if you wish to use a copyrighted work for comment, criticism, teaching, news reporting or related activities in the area of education/scholarship.
- Remember that the more expensive it is to produce a work (e.g. movies), the more copyright protection is given to it by the courts.
- Courts give creative works more protection than simply factual works.
- When copying works, it is best to use no more than 10% of a work; 5% is preferred. (Courts have been known to count words.)
- When copying or using works under the Fair Use provision, always display the copyright notice (copyright, year of first publication, and name of copyright holder) with all of the copyright ownership information (author, title, publisher, and place and date of publication) as given on the original work.

What is face-to-face exemption?

The Copyright Law of 1976, Section 106, states that teachers or students are not infringing upon the rights of the copyright holder if a, "...performance or display of a work [is given] by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audio visual work, the performance or display...is given by means of a copy that was not lawfully made...and that the person responsible for the performance knew or had reason to believe it was not lawfully made..."

Basically, it means that utilizing audio visual works (videotapes in particular) or other creative works in the classroom does not infringe on the copyright holders right to public performance or display as long as all of the following criteria are met:

- the work directly relates to an instructional use in the classroom
- the instruction is led by the classroom teacher, student, or a guest speaker
- the public performance or display takes place in a classroom or another similar place in which face-to-face teaching
- activities are in progress at the time of the performance/display
- the work is a lawfully made or acquired copy

For more information on copyright and creative commons go to [TechNTult](#).